

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

CIVIL ACTION NO.: 1:17-cv-00854-TDS-LPA

REBECCA KOVALICH and)
SUZANNE NAGELSKI,)
)
Plaintiffs,) **DEFENDANT DR. DAVID SPIVEY'S**
) **MOTION FOR SUMMARY**
vs.) **JUDGMENT AS TO PLAINTIFF**
PREFERRED PAIN MANAGEMENT) **REBECCA KOVALICH'S CLAIMS**
& SPINE CARE, P.A., *et al.*,)
)
Defendants.)

NOW COMES Defendant Dr. David Spivey, individually, ("Defendant" or "Dr. Spivey"), and pursuant to Rule 56 of the Federal Rules of Civil Procedure, and requests the entry of Summary Judgment in favor of Defendant as to all claims asserted by Plaintiff Rebecca Kovalich in this action. Defendant respectfully requests that Defendant's Motion for Summary Judgment be granted, upon the grounds that the pleadings, discovery materials, and other evidence of record demonstrate there is no genuine issue as to any material fact, and Defendant is entitled to judgment as a matter of law. Specifically, Defendant is entitled to summary judgment on the following grounds, among others, as explained more fully in Defendant's Memorandum of Law in Support of his Motion for Summary Judgment filed simultaneously herewith:

- Plaintiff's claim for tortious interference with contract must fail because Dr. Spivey is protected by a qualified privilege.

- Plaintiff's claim for tortious interference with contract must fail because Plaintiff has failed to proffer evidence that Dr. Spivey intentionally induced PPM to terminate Kovalich's at-will employment contract.
- Plaintiff's claim for tortious interference with contract must fail because Plaintiff has failed to proffer evidence that Dr. Spivey acted with legal malice.
- Plaintiff's claim for tortious interference with contract must fail because Plaintiff has failed to proffer evidence that Dr. Spivey acted without justification.
- Plaintiff's claim for violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1140, must fail because Dr. Spivey was not Plaintiff's employer.
- Plaintiff's claim for violation of ERISA must fail because Dr. Spivey did not discharge Plaintiff.
- Plaintiff's claim for violation of ERISA must fail because Dr. Spivey did not have a specific intent to interfere with Plaintiff's vesting the Cash Balance Plan.
- Plaintiff has failed to produce evidence to establish a claim for punitive damages.
- Plaintiff punitive damages claim is derivative of Plaintiff's other claims, which all fail.
- Plaintiff's has not proffered evidence that Dr. Spivey's actions constituted fraud, malice, or willful or wanton conduct.

WHEREFORE, Defendant Dr. David Spivey respectfully requests that Dr. Spivey's Motion for Summary Judgment be GRANTED, that Plaintiff Rebecca Kovalich's claims should be DISMISSED WITH PREJUDICE, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this the 1st day of October, 2018.

JACKSON LEWIS P.C.

/s/ Ann H. Smith _____

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**CERTIFICATE OF
SERVICE**

The undersigned certifies that on October 1, 2018, the foregoing *Defendant Dr. David Spivey's Motion for Summary Judgment as to Plaintiff Rebecca Kovalich's Claims* was electronically filed with the Clerk of the Court, using the Court's CM/ECF electronic service system, which will send notification of such filing as follows:

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